

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL B. FJERSTAD,

Plaintiff,

v.

SCOTT BACH, *et al.*,

Defendants.

CASE NO. C08-0088-JCC-JPD

ORDER DISMISSING § 1983 ACTION

The Court, having reviewed the Report and Recommendation (“R&R”) of the Honorable James P. Donohue, United States Magistrate Judge, and the balance of the record, does hereby find and ORDER:

- (1) The Court adopts the R&R (Dkt. No. 4).
- (2) In his objections to the R&R, Plaintiff asserts that Magistrate Judge Donohue improperly interpreted his initial complaint as a “collateral attack on his criminal charges.” (Objections 1–2 (Dkt. No. 5).) He argues that the sole purpose of his complaint and amended complaint is rather to “seek compensation for the loss of his property due to the illegal and unconstitutional actions of the defendants.” (*Id.* at 2.) Plaintiff’s intentions notwithstanding, it is clear from his proposed amended complaint (Dkt. No. 5-3) that he still challenges the validity of the search warrant used in his case. In the Ninth Circuit, “an action alleging illegal search and seizure of evidence upon which criminal charges are based does not accrue until the criminal charges have been

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1 dismissed or the conviction has been overturned.” *Harvey v. Waldron*, 210 F.3d 1008,  
2 1014 (9th Cir. 2000). Accordingly, Plaintiff’s claim must fail.

3 (3) The complaint and this action are DISMISSED for failure to state a claim upon which  
4 relief can be granted. Plaintiff’s application for leave to proceed *in forma pauperis* is  
5 DENIED as moot.

6 (4) Plaintiff’s Proposed Motion to Amend Complaint (Dkt. No. 5-2) is DENIED, and his  
7 Motion to Quash Motion to Amend and Amended Complaint (Dkt. No. 6) is DENIED  
8 as well.

9 (5) The Clerk is directed to send copies of this Order to plaintiff and to Judge Donohue.

10 DATED this 17th day of March, 2008.

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13 JOHN C. COUGHENOUR  
14 United States District Judge  
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